

not required. (MPEP 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (MPEP 803).

Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing any reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

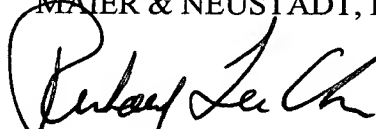
The Examiner has categorized the relationship between the inventions of Groups I and II as process of making and product made. Patentable distinctness may be proven if either or both of the following can be shown (1) that the process as claimed can be used to make other and materially different product or (2) the product as claimed can be made by another and materially different process (M.P.E.P.. 806.05). In the present case, it is asserted that the product as claimed can be made by another and materially different process such as by depositing an etched up layer on a contact dielectric layer using a mask in order to alleviate the need for a subsequent forming a hole through the etch stop layer. However, in the present case, the Examiner has provided insufficient reasons in support of his belief that the product as claimed can be made by a process of depositing an etch stop layer on a contact dielectric layer using a mask, and accordingly the Examiner's reasoning that the product of Group I is patentably distinct from the process of Group II is merely a restatement of the Examiner's ultimate conclusion that the two groups are patentably distinct. Such circular reasoning fails to meet the burdens placed on the Examiner to provide reasons in support of his belief that the two groups are patentably distinct

and accordingly the Examiner has not met his burden and accordingly withdrawal of the restriction is respectfully requested.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

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